

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: E. I. DU PONT DE
NEMOURS AND COMPANY C-8
PERSONAL INJURY LITIGATION**

Case No. 2:13-md-2433

**JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Elizabeth P. Deavers**

This document relates to: **ALL ACTIONS.**

CASE MANAGEMENT ORDER NO. 7

Selection of the Initial Trial Cases and Expert Disclosures Schedule

In furtherance of the effective and efficient case management of complex litigation, and in accordance with the parameters suggested in CMO No. 6, the following procedures are set for the selection of the Initial Trial Cases and the expert witness disclosure schedule.

A. IDENTIFICATION AND SELECTION OF INITIAL TRIAL CASES:

1. Subject to the parameters of this Order, at 4:00 PM Eastern Time on August 7, 2014, a designee from the PSC and from Defendant's counsel shall each simultaneously exchange lists of 4 Discovery Plaintiffs (lists will include each plaintiff's name, MDL Docket Number, and identification of primary plaintiff's counsel) that each chooses as their Initial Trial Case selections. Thereafter on August 14, 2014, each side may strike one (1) of the other side's designated Initial Trial Case Selections.

2. On August 22, 2014, the parties will submit to the Court a proposed list of six (6) cases for the Court's consideration as Initial Trial Cases. Three (3) of these cases will be plaintiffs' proposed Initial Trial Cases and three (3) of these cases will be defendant's proposed Initial Trial Cases. At the same time, the parties will each submit letters to the Court in support of their proposed Initial Trial Cases and in opposition to the selections of the opposing side.

3. On August 29, 2014, a response letter shall be submitted by both sides to the Court and the other side responding to the other side's August 22, 2014 submissions. The Court will hold a conference on or about September 9, 2014 with the counsel for the PSC and Defendant's counsel to discuss the parties' submissions if needed.

4. On or before September 19, 2014, the Court will select two of the six (6) cases as the Initial Trial Cases. Further the Court shall select which case is to be tried on September 14, 2015 and which is to be tried on November 30, 2015. However, in the event that any of the PSC and defense designated case are the same, that/those case(s) shall constitute the initial trial case(s). As noted, the trial schedule for the first two trials shall remain as September 14, 2015 and November 30, 2015, respectively (consistent with CMO 2, Section VI).

5. Additional discovery shall be permitted in the two designated trial cases. Absent leave of Court, however, each party will be prohibited from conducting repetitive deposition discovery with a specific witness on any matter covered with that witness during a prior deposition. Defendant notes a potential need to conduct follow up deposition questioning of the plaintiffs after receiving the trial plaintiffs' responses to written discovery. It is understood that the parties will address any such requests if and when they are made.

6. The Court has set early March, 2016, late April, 2016, August 2016 and October 2016 as supplemental trial dates to follow the first two trials in this MDL. The Court has indicated a presumption to select the trial plaintiffs for these supplemental trials from the remaining four plaintiffs after the selection for the first two trials under paragraph 4 above. The plan and process for how the trial plaintiffs for trials 3, 4, 5 and 6 will be chosen and/or determined will be subject to a separate Case Management Order to be presented to the Court by January 30, 2015. Trial plaintiffs for trials 3 and 4 shall be designated and identified on or

before May 1, 2015. Any additional discovery necessary in these two cases shall be conducted and completed before July 17, 2015. A timeline for expert reports and other pretrial deadlines for trials 3 and 4 shall be governed by a later Case Management Order. A timeline for identification of plaintiffs, discovery, expert reports and other pretrial deadlines for trials 5 and 6 shall be governed by a later Case Management Order.

B. EXPERT DESIGNATIONS AND EXPERT DISCOVERY FOR INITIAL TRIAL CASES:

1. On or before November 18, 2014, Plaintiffs shall designate, pursuant to Fed. R. Civ. P. 26, their expert witnesses for the first two Trial Cases.
2. On or before January 9, 2015, Defendant shall designate pursuant to Fed. R. Civ. P. 26, its expert witnesses for the first two Trial Cases.
3. On or before January 23, 2015, Plaintiffs shall designate its rebuttal expert witnesses, if any, for the first two Trial Cases.
4. Depositions of expert witnesses shall be completed by March 21, 2015. It is the intention of the parties that the depositions of plaintiffs' expert witnesses be taken before the defendant's expert witnesses addressing the same subject matter. Nothing in this Order requires that all plaintiff expert depositions must be completed before any defendant expert depositions are undertaken.
5. Notwithstanding section A.5. above, if any of the plaintiffs' treating or diagnosing doctors who are deposed during the bellwether discovery plaintiff period are later designated as testifying experts, then the designating party will be required to make timely expert disclosures for such witness and the other party may take that doctor's deposition as an expert witness.

6. The parties intend that the limitations on expert discovery set-forth in Rule 26 of the Federal Rules of Civil Procedure, including the provision of Rule 26(b)(4)(A)-(D) limiting discovery with respect to draft reports, communications with experts, and depositions of consulting experts, shall apply to all cases.

C. Summary Judgment & *Daubert* Motions:

1. Summary Judgment and *Daubert* motions:

(a) Plaintiffs and Defendant shall file any motions for summary judgment and/or motions for partial summary judgment on or before March 28, 2015.

(b) All *Daubert* motions are due on or before March 28, 2015.

(c) The parties will have 30 days to respond to motions for summary judgment and/or *Daubert* motions.


(d) The parties will have 14 days to file replies to any responses to motions for summary judgment and/or *Daubert* motions.

D. Trial Schedule: Deadlines pertaining to final trial submissions for each of the two initial trials, including but not limited to motions *in limine*, the final pre-trial conference date, and deadlines pertaining to the parties' deposition designations, witness lists, and exhibit lists will be the subject of a separate Case Management Order. The parties intend to submit a proposed order regarding these issues to the Court on or before February 27, 2015.

IT IS SO ORDERED.

8-6-2014
Date

8-6-2014
Date


USDJ Edmund A. Sargus, Jr.


USMJ Elizabeth P. Deavers